BAIL SLIP

That the appellant/Accused viz Murugan was directed to be released on bail by the order of this court dated 9.8.2004 and made in Crl.Mp.8441/04 in Crl.Rc.1316/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1316 of 2004

Murugan .. Petitioner/Accused

Vs.

The State rep by
The Sub-Inspector of Police,
Kurusillapattu Police Station,
Vellore District,
(Crime NO.367/1998) .. Respondent/Complainant

Prayer:- This revision has been preferred against the judgment dated 12.05.2004 in C.A.No.18 of 2002 passed by the Additional District & Sessions Judge (FTC), Thiruppathoor, Vellore District, confirming the judgment in S.C.No.209 of 1999 on the file of the Assistant Sessions Judge, Thiruppathoor, Vellore District, dated 29.7.2001.

For Petitioner :Mr.E.Kannadasan

For Respondent :Mr.V.R.Balasubramanian
Additional Public Prosecutor

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JUDGMENT

This revision has been preferred against the judgment in C.A.18 of 2002 on the file of the Additional District & Sessions Judge, (FTC), Thiruppathoor, Vellore District, which had arisen out of the judgment in S.C.No.209 of 1999 on the file of the Assistant Sessions Judge, Thiruppathoor, Vellore District. The accused has been charged under Section 498(A), 304(B) IPC and under Section 4 of the Dowry Prohibition Act.

2.The learned Judicial Magistrate No.III, Thiruppathoor, after taking cognizance of the case had issued summons to the accused and on his appearance copies under Section 207 of Cr.P.C., were furnished to the accused and since the case is triable by the Court of Sessions, the learned Judicial Magistrate committed the case to the Court of Sessions.

3.The accused appeared before the Assistant Sessions Judge, Thiruppathoor. The learned Assistant Sessions Judge had framed charges under Section 304(B), 498(A) IPC and under Section 4 of the Dowry Prohibition Act and when questioned the accused pleaded not guilty.

4.The short facts of the case of the prosecution is that the marriage between the deceased Ganthimathi and the accused took place on 19.6.1997 and after the marriage they lived together happily only for six months, thereafter, according to the prosecution, the accused had demanded Rs.50,000/- as an additional dowry and illtreated her to bring Rs.50,000/- from her parents, which had driven her to take an extreme step of committing suicide by hanging on 11.2.1998 at about 3.00 am. Hence, the accused has been charged under Section 498(A), 304(B) IPC and under Section 4 of Dowry Prohibition Act. On the side of the prosecution P.W.1 to P.W.9 were examined and Ex.P.1 to Ex.P.9 were exhibited and M.O.1 was marked.

5.P.W.1 is the mother of the victim girl. According to her, the marriage between her daughter/victim girl and the accused took place some three years ago and they have been blessed with a female child and at the time of marriage 7 soverigns of gold ornaments were presented to the bride and one soverign of gold chain was presented to the bridegroom and the accused had demanded Rs.50,000/- as an additional dowry. But she and her husband were in a position to offer only Rs.15,000/- towards additional dowry and according to P.W.1, her daughter, the victim girl, came to her house thrice by saying that her husband has insisted to bring Rs.50,000/- additional dowry less Rs.15,000/- already given by her and her husband and thereafter Rs.5,000/- was given to the deceased and afterwards they lived happily for two months and again the accused had sent the deceased to P.W.1's house to bring more money, and on one day one Arumugam and Mani came to her house and informed that her son-in-law had consumed poison and he was admitted in Government hospital at Thiruppathoor as an inpatient.

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When her daughter accompanied her to see the accused in the hospital, the accused chided her by saying that who asked her to come to the hospital. When the accused and his father Natarajan came to her house and requested her to send their daughter/deceased to their house, her daughter-deceased refused to go along with them by saying that the accused may torture her. Even on that occasion a sum of Rs.3000/- was given by her (P.W.1) to the deceased and 17 days thereafter she received an information that her daughter had committed suicide and when she went to see the corpse of her daughter, she could see nail mark and blood on the walls of the bed room and that she was examined by the Sub-Collector.

6.P.W.2 is the father of the deceased. He would also depose to the fact that at the time of marriage of his daughter/deceased with the accused, he gave 8 soverigns of gold ornaments and a cash of Rs.15,000/- to the accused and thereafter both the victim girl and the accused lived together happily only for six months and once in two or three months the accused used to send his wife-victim girl to his(P.W.2) house to bring more dowry and that on one occasion he gave Rs.5,000/- and on another occasion he gave Rs.10,000/- and even thereafter his daughter used to visit his house very often by saying that her husband/accused had insisted to bring more dowry and on the last occasion his daughter came and informed him that her husband insisted her to bring Rs.5,000/- from her parents and since he could not raise the said amount of Rs.5,000/-, his daughter did not go to her husband's house, but stayed with him and at that time he was informed that his son-in-law had consumed poison. When he, his wife and his daughter/deceased went to the hospital to see the accused, who was admitted in the hospital as an inpatient, the accused chided his daughter/deceased by saying why she has come to see him (accused). Thereafter there was a panchayat took place and according to the decision of the panchayat, the accused took his wife along with him and on the following Saturday, he was informed that his daughter has committed suicide by hanging and that he was examined by the Sub-Collector.

7.P.W.3 is a relative of the accused. P.W.3 to P.W.5 have not supported the case of the prosecution. Hence, they were treated as hostile witnesses.

8.P.W.6 is the doctor, who had conducted post-mortem on the corpse of the deceased and issued Ex.P.1-postmortem report and according to him, the deceased would have died 32 to 38 hours prior to the autopsy due to suffocation due to hanging. Ex.P.2 is the analyst's report.

9.P.W.7 is the Revenue Divisional Officer, who had conducted inquest on the corpse of the deceased. Ex.P.3 is the inquest report.

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10.P.W.8 is the then Sub-Inspector of Police, Kurusillapattu Police Station, who had registered the case under Cr.No.367 of 1998 under Section 174 of Cr.P.C., on the basis of the complaint preferred by the accused. Ex.P.4 is the complaint preferred by the accused. Ex.P.5 is the FIR.

11.P.W.9 is the Inspector of Police, who took up the investigation. He has visited the place of occurrence and prepared observation mahazar-Ex.P.6. Ex.P.7 is the rough sketch drawn by him. He has examined the witnesses and recorded their statements. He has arrested the accused and produced before the judicial Magistrate for judicial custody. After completing the investigation, he has filed the charge sheet.

12.When incriminating circumstances were put to the accused, he would deny his complicity with the crime. The accused has further stated that on the date of occurrence the younger brother of his wife/deceased came and informed that the elder brother of the deceased Murugesan's wife was seriously ill and requested his wife/deceased to go along with him and see her elder brother. At that time the accused informed the younger brother of the deceased that he had no money on his hand even to meet the bus charge and hence he promised to send her the next day. Due to this his wife/deceased got dejected and committed suicide on the following day by hanging herself and that he has not demanded any dowry from his in-laws. He has not examined any witness on his side.

13.On the available evidence both oral and documentary, the learned trial judge has held that the accused is guilty under Section 498(a) IPC and also under Section 4 of the Dowry Prohibition Act and sentenced to undergo 2 years RI and a fine of Rs.2000/- with default sentence under Section 498(A) IPC and sentenced the accused to undergo one year RI and a fine of Rs.1000/- with default sentence under Section 4 of the Dowry Prohibition Act and has acquitted the accused from the charge under Section 304(B) IPC. Aggrieved by the findings of the learned trial judge, the accused preferred an appeal before the Court of Sessions in C.A.No.18 of 2002. The learned first appellate Judge after scanning the evidence and also after going through the findings of the learned trial Judge has confirmed the findings of the learned trial Judge thereby dismissing the appeal, which necessitated the accused to approach this Court.

14.Now the point for determination in this revision is whether the conviction and sentence against the accused under Section 498(A) IPC and under Section 4 of the Dowry Prohibition Act will be sustainable for the reasons stated in the memorandum of revision?

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15.The Point:- Admittedly after the occurrence the accused himself has preferred the complaint with the police as seen from the evidence of the investigating officer P.W.9. According to P.W.1 and P.W.2, the parents of the deceased, even at the time of betrothal the accused had demanded Rs.50,000/- towards dowry, but P.W.1 and P.W.2 are able to give only Rs.15,000/- at that time and subsequently, according to P.W.1 & P.W.2, their daughter/deceased was sent by the accused to bring the balance of Rs.50,000/- and before the date of occurrence thrice their daughter visited their house only for the purpose of getting more dowry. In this regard, the evidence of P.W.7, RDO, will have a bearing on this case. In the cross-examination P.W.7, RDO, would admit that except P.W.1 & P.W.2 no other witness has deposed during his enquiry about any cruelty or dowry harassment of A1 on the deceased. P.W.7 would further admit in the cross-examination that very often the deceased used to go to her parents house and the accused and his parents used to go to the house of the parents of the deceased and pacifying her and brought her on very many occasions. There is absolutely no complaint immediately preferred either by P.W.1 or P.W.2 about the demand of dowry. To show that the deceased had sustained injury at the hands of the accused there is absolutely no medical evidence. Even according to P.W.6, the doctor, who had conducted autopsy on the corpse of the deceased there was no external injuries found on the body of the deceased. So there was absolutely no evidence on record to show that the deceased was subjected to any criminal assault or torture at the hands of the accused before the occurrence. According to P.W.1, even during the panchayat and even before the panchayatdars, the accused had demanded dowry, but one of the panchayatdars viz.P.W.3 has not supported the case of the prosecution. The reason for committing suicide has been spoken to by the accused while he was examined under Section 313 of Cr.P.C., before the trial Court. The reason being since the accused could not send his wife/deceased along with her brother, who had informed that the wife of the other brother of the deceased was ill and requested the victim girl to go along with him, she immediately became restless and committed suicide on the next morning. Under such circumstances, the findings of the Court below that the deceased was subjected to dowry harassment and cruelty and the accused is liable to be convicted under Section 498(A) IPC and under Section 4 of the Dowry Prohibition Act warrant interference from this Court. Point is answered accordingly.

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16.In the result, the revision is allowed and the judgment of the first appellate Court in C.A.No.18 of 2002 on the file of the Additional District & Sessions Judge (FTC), Thiruppathoor, Vellore District, is hereby set aside and the accused is acquitted from all the charges levelled against him. The fine if any paid by the accused is to be returned to him. Bail band shall stand cancelled.

ssv

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Additional District & Sessions Judge,
FTC, Thirupaathur, Vellore.

2.The District & Sessions Judge,
Thiruppathur.

3.The Assistant Sessions Judge,
Thiruppathur.

4.The Public Prosecutor, High Court,
Madras.

5.The Sub-Inspector of Police,
Kurusillapattu Police Station,
Vellore District,
(Crime No.367/1998)

6.The Superintendent Central Prison,
Vellore.

7.The Judicial Magistrate No.III,
Thiruppathur, Vellore.

8.The Chief Judicial Magistrate,
Vellore.

SA(CO)
dcp/3.8

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